

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

CARLOS A. OTERO-TORRES, et al

Plaintiff

v.

FEDERICO COLLAZO-RIVERA, et al

Defendants

Civil No. 09-2006 (SEC)

**OPINION AND ORDER**

Pending before the Court is Carlos A. Otero-Torres' ("Plaintiff") Motion to Dismiss (Docket # 39). Co-defendants Erasmo Collazo, Olga Rivera, and the Rivera-Collazo conjugal partnership (collectively "Defendants") filed a Response in Opposition thereto, to which Plaintiff proffered a Reply.<sup>1</sup> After considering the pleadings and the applicable law, Plaintiff's Motion to Dismiss will be **GRANTED**.

**Factual & Procedural Background**

The relevant facts pertaining to the present Motion to Dismiss are straightforward. On October 21, 2005, Plaintiff filed a civil complaint against Defendants in the Puerto Rico Court of First Instance, Bayamón Part, Civil No. DKDP-2005-0623. The suit was brought under Articles 1802 and 1803 of the Civil Code of Puerto Rico, P.R. Laws Ann. tit. 31, §§ 5141 & 5412 for damages resulting from an alleged shooting by Plaintiff's former employer and Co-defendant Collazo-Rivera on October 23, 2004. The local court granted Plaintiff's motion to voluntarily dismiss said suit without prejudice, and judgment was entered on January 14, 2009. Defendants did not object to the dismissal without prejudice. Plaintiff alleges that he originally

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<sup>1</sup>The remaining co co-defendants Collazo-Rivera ("Collazo-Rivera"), Ecori Transport, Inc., and Transportes Collazo-Rivera, Inc. did not join the counterclaim.

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3 brought the suit in local court because he was not appraised of his right to bring a claim under  
4 diversity jurisdiction, nor was he adequately advised by his prior counsel.

5 Regardless of the motivations for switching forums, on September 30, 2009, Plaintiff  
6 filed the present action, and on March 2, 2010, Defendants answered and also filed a  
7 counterclaim against Plaintiffs. The counterclaim asserts that Otero assaulted Erasmo Collazo,  
8 and that Collazo-Rivera, Defendants' son, was left with no other option than to turn his weapon  
9 against Plaintiff. Defendants seek damages for pain, suffering, and emotional distress.

10 Plaintiff denies these allegations, and also argues that Defendants' counterclaim is time-  
11 barred, because they failed to file a compulsory counterclaim in the local court case, and thus  
12 never tolled Article 1802's one-year statute of limitations.

13 **Standard of Review**

14 *Fed. R. Civ. P. 12(b)(6)*

15 To survive a Rule 12(b)(6) motion, Plaintiffs' "well-pleaded facts must possess enough  
16 heft to show that [they are] entitled to relief." Clark v. Boscher, 514 F. 3d 107, 112 (1<sup>st</sup> Cir.  
17 2008).<sup>2</sup> In evaluating whether Plaintiffs are entitled to relief, the court must accept as true all  
18 of their "well-pleaded facts [and indulge] all reasonable inferences therefrom" in the plaintiff's  
19 favor. Twombly, 127 S. Ct. at 1964. The First Circuit has held that "dismissal for failure to state  
20 a claim is appropriate if the complaint fails to set forth factual allegations, either direct or  
21 inferential, respecting each material element necessary to sustain recovery under some  
22 actionable legal theory." Gagliardi v. Sullivan, 513 F. 3d 301, 305(1<sup>st</sup> Cir. 2008). Courts "may  
23 augment the facts in the complaint by reference to documents annexed to the complaint or fairly

24  
25 <sup>2</sup> FED. R. CIV. P. 8(a)(2) requires only "a short and plain statement of the claim showing that the  
26 pleader is entitled to relief," in order to allow the defendant fair notice of what the claim is and the  
grounds upon which it rests. Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1964 (2007).

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incorporated into it, and matters susceptible to judicial notice.” Id. at 305-306. However, in judging the sufficiency of a complaint, courts must “differentiate between well-pleaded facts, on the one hand, and ‘bald assertions, unsupportable conclusions, periphrastic circumlocution, and the like,’ on the other hand; the former must be credited, but the latter can safely be ignored.” LaChapelle v. Berkshire Life Ins., 142 F.3d 507, 508 (quoting Aulson v. Blanchard, 83 F.3d 1, 3 (1<sup>st</sup> Cir.1996)); Buck v. American Airlines, Inc., 476 F. 3d 29, 33 (1<sup>st</sup> Cir. 2007); see also Rogan v. Menino, 175 F.3d 75, 77 (1<sup>st</sup> Cir. 1999). Thus Plaintiffs must rely in more than unsupported conclusions or interpretations of law, as these will be rejected. Berner v. Delahanty, 129 F.3d 20, 25 (1<sup>st</sup> Cir. 1997) (citing Gooley v. Mobil Oil Corp., 851 F.2d 513, 515 (1<sup>st</sup> Cir. 1988)).

### Applicable Law and Analysis

The limitations period for actions brought pursuant to Article 1802 is one year, as established by Article 1868 of the Civil Code of Puerto Rico. See P.R. Laws Ann. tit. 31, § 5298(2). Furthermore, “[t]hat period ordinarily begins to run at the time that the aggrieved party knows (or should have known) of both his injury and the identity of the party who caused it.” Gonzalez Figueroa v. J.C. Penney Puerto Rico, Inc., 568 F.3d 313, 318 (1<sup>st</sup> Cir. 2009); see also Montañez v. Hosp. Metropolitano, 157 P.R. Dec. 96, 106 (2002). The term to sue then begins to run on the day after the claim accrues.

In the case at hand, the incident giving rise to the counterclaim was a violent confrontation, which ended traumatically with Collazo-Rivera shooting Otero. Defendants have alleged that Otero’s aggression caused them pain and suffering, as well as physical injuries. Nevertheless, no allegations have been made that their damages were somehow latent for any period of time before being discovered, or that the incident carried on creating further damages that were not discovered until a future date. Therefore, this Court holds that the effective date

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2 of accrual for any damages claims must be October 23, 2004, the date of the incident with  
3 Otero.

4 Accordingly, under Article 1802, in the absence of an act interrupting or tolling the  
5 limitations period, it would have ended on October 23, 2005. However, Plaintiff sued in state  
6 court on October 21, 2005, effectively tolling his claims. The suit also appears to have tolled  
7 Defendants' counterclaims, but the facts of the case are not so simple.

8 Under Puerto Rico law, the limitation of tort actions is "not a procedural, but a  
9 substantive matter . . ." covered by the Civil Code. Febo Ortega v. Tribunal Superior, 102  
10 D.P.R. 405, 2 P.R. Offic. Trans. 506 (1974). However, Febo clearly adopted the Spanish Civil  
11 Code doctrine that, "the interruption arising from the filing of a complaint also favors the  
12 defendant conterclaimant when his action derives from the same facts that gave rise to the  
13 original complaint." Id. The reasoning behind this is that, as a limitations period runs, the  
14 defendant might believe the plaintiff has lost interest in the matter and not file a claim. Should  
15 the filing of a complaint not toll the period for both parties, plaintiffs could take advantage of  
16 this situation by waiting until the end of the limitations period to file, leaving defendants with  
17 no right to assert counterclaims but an obligation to defend themselves against plaintiffs'  
18 allegations. The Supreme Court of Puerto Rico found that allowing such a practice would  
19 offend common conceptions of justice and lead to no "social utility." Id.

20 The Febo holding appears to favor Defendants, but the facts in the present case are  
21 markedly different from those considered in said decision. As discussed above, the present  
22 claim was filed before the Commonwealth courts in 2005, but no counterclaim was proffered  
23 until March of this year. Defendants are benefitted by the tolling of their claims when plaintiffs  
24 first file suit, but Puerto Rico Rule of Civil Procedure 11.1, governing compulsory  
25 counterclaims, provides for preclusion of these claims if they are not plead in the answer to the  
26 complaint or in a timely fashion. To wit, Rule 11.1 states:

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A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.

(Official translation).<sup>3</sup> This district has concluded that “[t]he preclusion covers those issues actually litigated and adjudicated and extends to those issues which could have been litigated and adjudicated in the previous suit.” R-G Financial Corp. V. Vergara-Nunez, 381 F.Supp. 2d 1, 4 (D.P.R. 2005); see also Del Carmen Tirado v. Department of Education, 296 F.Supp.2d. 127, 130 (D.P.R. 2003). Furthermore, it is only logical to conclude that failure to file a timely counterclaim would reactivate the limitations period.

Here, the parties and claims are identical to those which engendered the Commonwealth action first brought in 2005. Therefore, this Court must conclude that because Defendants failed to exercise their right to file a compulsory counterclaim in the first Commonwealth court action, said counterclaim is now precluded. After several years of inaction, and a change of forum, Defendants have undoubtedly lost their right to counterclaim whether through time-bar, or equity. It is too late in the day for the interests of justice to favor Defendants' claims.

### Conclusion

Based on the foregoing, Plaintiff's motion to dismiss is **GRANTED**. Defendants' counterclaim is **DISMISSED** with prejudice. Judgement shall be entered accordingly.

**IT IS SO ORDERED.**

San Juan, Puerto Rico, this 4<sup>th</sup> day of August, 2010.

*S/Salvador E. Casellas*  
Salvador E. Casellas

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<sup>3</sup> The federal rule is nearly identical. Pursuant to Fed. R. Civ. P. 13(a)(1)(A), “[a] pleading must state as a counterclaim any claim that ... the pleader has against an opposing party if the claim[ ] arises out of the transaction or occurrence that is the subject matter of the opposing party's claim[.]”

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U.S. Senior District Judge